IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 330 of 1998
With
CRIMINAL REVISION APPLICATION No. 328 of 1998
With
CRIMINAL REVISION APPLICATION No. 332 of 1998
With
CRIMINAL REVISION APPLICATION No. 382 of 1998
With
CRIMINAL REVISION APPLICATION No. 396 of 1998
With
CRIMINAL REVISION APPLICATION No. 401 of 1998
With
CRIMINAL REVISION APPLICATION No. 627 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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STATE OF GUJARAT - Applicant
Versus
UTTAMCHAND HATHICHAND SHAH & OTHERS-Respondents

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Appearance :
MR SS PATEL ADDL PUBLIC PROSECUTOR for Applicant.
MR DK MODI with MR MD MODI; MR DD VAIDYA; MR PRABHAV MEHTA for Nanavati Associates; - for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 27/11/2006

ORAL JUDGMENT:

1. The State has approached this Court under section 397 of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”), in each of the petitions to challenge the various orders whereby the accused in the criminal cases filed under the Prevention of Food Adulteration Act, 1954 have been discharged only on the ground that the analysis reports submitted in evidence were not signed on the day they were prepared. The trial courts followed the orders and judgments of this court in holding that, if the reports were not prepared and signed by the analyst on the same day when the samples were analysed, they would cease to have any evidentiary value and, therefore, the accused could not be convicted on the basis of such report.

2. The learned A.P.P. pointed out from the Division Bench judgment of this court ***in State of Gujarat v. Vishramdas Virumal [2000 (4) GLR 2884]*** that those very orders and judgments of this court relied upon by the trial court were called into question in the reference made to the Division Bench and, after elaborate discussion of

the relevant rules, the question referred to the Division Bench was answered in the following terms:

> *"A report of the Public Analyst delivered under Sec.13(1) of the Prevention of Food Adulteration Act, 1954 declaring on analysis of a sample of food to be "adulterated" or "misbranded" cannot be ignored without examining the Public Analyst as a witness either by the Court or the accused raising a doubt about the correctness of the report only on the ground that the report is signed by the Public Analyst later on and not on the date on which sample was analysed."*

The learned A.P.P. submitted that, after the law being settled as above, the impugned orders could not legally stand and, therefore, they were required to be quashed so as to permit further proceeding of the trial pursuant to the original complaints.

3. Learned advocate Mr.B.K.Modi, appearing for the original accused in each of the cases, submitted that the aforesaid Division Bench judgment having been pronounced or having come to light later on, the impugned orders were legal and proper on the date they were made and once

the accused person was discharged, he must get the benefit of the principle of prospective overruling. He submitted that the doctrine of prospective overruling was recognized and applied by this court in similar cases of food adulteration. He relied upon the judgment of this court in ***Arvind Kumar Trikamlal Raval v. State of Gujarat [1995 Cri.L.J. 3174]*** wherein, after two Full Bench pronouncements, the accused had lost both the grounds of defence on which he had secured his acquittal before the first appellate court. It was urged before this court that the law which was holding the field came to be altered only after acquittal of the accused. The court observed, after referring to the decisions of the Supreme Court in the case of State of ***Kerala v. Alaserry Mohammed [1978 (1) FAC 145]*** and in ***Rajaldas Gurunamal Pamnani v. State of Maharashtra [1975 (1) FAC 321 (FB),*** that the Supreme Court had leaned towards the doctrine of prospective overruling because, though the earlier view which was holding the field for a pretty long time came to be altered, the Supreme Court thought it fit and proper not to interfere with the orders of acquittal in those cases which were decided before the alteration of the legal position consequent to the pronouncement by the larger bench.

3.1 While coming to that conclusion, the Supreme Court had made a reference to an earlier decision in ***Food Inspector, Calicut Corporation v. Cherkatill Gopalan [AIR 1971 SC 1725]*** in which the following view was taken:

> *"But in view of the fact that the appellant has argued the appeal only as a test case and does not challenge the acquittal of the respondents, we merely set aside the order and judgment of the High Court. But we may make it clear that apart from holding the respondents technically guilty, we are not setting aside the order of acquittal passed in that case".*

This Court, in ***Arvind Kumar Trikamlal Raval*** (supra), referred to various judgments of different High Courts wherein the doctrine of prospective overruling was accepted. The court also referred to the following observations of the Supreme Court in ***L.C.Golak Nath v. State of Punjab [AIR 1967 SC 1643]***:

> *"It is indisputable that a court can overrule its earlier decision. That cannot be a valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an*

appeal may not be benefited by it, in similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated."

It was ultimately held that, if the doctrine of prospective overruling was recognized, the order of acquittal passed by the court below could not be set aside, but the accused should be held only technically guilty and the appeal had to be allowed for that limited purpose only. Thus, the respondent No.1 in that case was found to be technically guilty but without the liability of undergoing the sentence or paying the fine. That judgment was followed in the subsequent judgment of this court in ***State of Gujarat v. Naranbhai Samji Patel and others [2002 (2) FAC 16].***

3.2 On the basis of the above judgments, it was submitted by learned counsel Mr.Modi that, in the facts of the present cases also, the orders made under section 203 of the Cr.P.C. to dismiss the complaints or drop the proceedings were

required to be upheld and the law followed in the impugned orders was required to be held to have been prospectively overruled by the Division Bench, as aforesaid.

4. It is not the case of the respondents that, while answering the question referred to it, the Division Bench had anywhere even remotely indicated that the legal proposition settled by it would only have prospective application. It is well-settled that the interpretation of a provision relates back to the law itself and cannot be prospective. When the court decides that the interpretation earlier given to a particular provision was not legal, it declares the law as it stood right from the beginning as per its decision. The doctrine of prospective overruling was initially made applicable to the matters arising under the Constitution, but the same has since been made applicable to the matters arising from the statutes as well. As held by the Supreme Court in ***Sarwan Kumar v. Madan Lal Aggarwal [(2003) 4 SCC 147],*** after referring to ***Golak Nath*** (supra), when the Supreme Court had not held in ***Gian Devi Anand v. Jeevan Kumar [(1985) 2 SCC 683]*** that the law declared by it would be prospective in operation, it was not for the High Court to say that the law laid down by the Supreme in ***Gian Devi Anand***

(supra) would be prospective in operation. If that were to be accepted, then the conflicting rules could be laid down by different High Courts regarding applicability of the law laid down in ***Gian Devi Anand's*** case (supra) or any other case. The Supreme Court specifically observed in para 15 of the judgment that such a situation cannot be permitted to arise. Their Lordships held:

> "*....In the absence of any direction by this court that the rule laid down by this court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand by this court would be applicable to the cases arising from the date of the judgment of this court cannot be accepted being erroneous.*"

It is trite that a precedent is an authority only for what it actually decided and not what logically flows from it. It was earlier observed by the Supreme Court in ***State of Punjab v. Surinder Kumar [(1992) 1 SCC 489]*** that a decision is available as a precedent only if it decides a question of law. None was entitled to rely upon an order of the Supreme Court which directed a temporary employee to be regularized in his service without assigning reasons. It had

to be presumed that for special grounds which must have been available to the temporary employees in particular cases, they were entitled to the relief granted. Merely because grounds were not mentioned in the judgment of the court, it could not be understood that it was passed without an adequate legal basis therefor. It was held to be futile to suggest that if the Supreme Court had issued an order, which apparently seemed to be similar to the impugned order, the High Court could also do so. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary *"for doing complete justice in any case or matter pending before it"*, which authority the High Court did not enjoy.

5. Thus, in short, the order of the Supreme Court in ***Food Inspector, Calicut Corporation*** (supra) to hold the accused person technically guilty without setting aside the order of acquittal could not be blindly followed without understanding and appreciating the ratio of the principle laid down in the judgment of the Supreme Court.

6. In the facts of the present cases, even assuming that the three propositions laid down by the Supreme Court in para 51 of the judgment in

Golak Nath v. State of Punjab (supra) allowed invocation of the doctrine of prospective overruling, it is the discretion of the court to mould it suitably so as to do justice in the matter before the court. It is not in dispute that, in the facts of the present cases, the accused persons were accused of serious offences under the provisions of the Prevention of Food Adulteration Act and were discharged or acquitted at the initial stage ignoring the analysis reports only on the basis of variance between the date of analysis and the date of report; and that course of action was contrary to the principle laid down by the Division Bench in ***Vishramdas Virumal*** (supra). It is specifically observed by the Division Bench in para 16 of the judgment as under:

> *"16. If the report of the Pubic Analyst is in Form III, the court has to accept the same as admissible in evidence. It is always open to the party against whom the report is tendered by the expert either to rebut the facts stated therein by his own or other's evidence or by calling expert to be produced before the court for cross-examination under section 257 (sic) of the Cr.P.C. which prayer the court is required to consider....."*

7. Thus, the later Division Bench judgment of this court in ***Vishramdas Virumal*** (supra) could not have been taken note of in ***Arvind Kumar Trikamlal Raval*** (supra) and the later judgment of this court in ***Naranbhai Samji Patel*** (supra) also has not taken note of the aforesaid Division Bench judgment. In view of the later judgment of the Supreme Court in ***Sarwan Kumar*** (supra), after referring to ***L.C.Golak Nath*** (supra) which was relied upon by this court in ***Arvind Kumar Trikamlal Raval*** (supra), and in absence of any indication in the Division Bench judgment, the doctrine of prospective overruling could not be applied in the facts of the present cases so as to uphold the impugned orders prematurely discharging the accused. Even if the court were to have any discretion which could be exercised in favour of the accused persons, there is no ground to exercise such discretion.

8. Therefore, in the facts and for the reasons discussed hereinabove, each of the applications is allowed and the impugned orders are set aside. Rule in each application is made absolute with no order as to costs.

9. In case R & P are received in this Court,

they will be returned to the respective trial courts forthwith and the trial courts shall proceed with the original criminal cases in accordance with law and as expeditiously as practicable.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)